

House Bill 714

By: Representatives Nguyen of the 89th, Boddie of the 62nd, Cannon of the 58th, Frye of the 118th, Hutchinson of the 107th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 5 of Title 42 of the Official Code of Georgia Annotated,
2 relating to conditions of detention generally, so as to revise provisions relating to
3 punishment; to provide definitions; to provide for a schedule of penalties for administrative
4 infractions; to provide for a schedule of penalties for substantive infractions; to provide
5 maximum periods of consecutive and total time an incarcerated person can be subject to
6 restrictive housing; to provide limitations for the use of restrictive housing; to provide that
7 incarcerated persons subject to restrictive housings receive certain services; to limit the
8 release of incarcerated persons directly from restrictive housing to the community; to provide
9 for related matters; to provide an effective date; to repeal conflicting laws; and for other
10 purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Article 3 of Chapter 5 of Title 42 of the Official Code of Georgia Annotated, relating to
14 conditions of detention generally, is amended by revising Code Section 42-5-58, relating to
15 prohibition against corporal punishment, use of handcuffs, leg chains, and other restraints,
16 and permissible punishment generally, as follows:

17 "42-5-58.

18 (a) As used in this Code section, the term:

19 (1) 'Administrative infraction' means an action that does not otherwise constitute a
20 violation of Georgia criminal law but is an infraction of promulgated correctional rules
21 and regulations committed inside a detention facility.

22 (2) 'Alternative disciplinary sanction' means all forms of penalty now or hereafter
23 authorized in the rules and regulations of the department but shall not include restrictive
24 housing.

25 (3) 'Detention facility' shall have the same meaning as in Code Section 42-5-55.

(4) 'Restrictive housing' means a form of physical separation in which an incarcerated person is placed in a locked room or cell for more than 21 hours during a 24 hour period, including but not limited to administrative segregation or disciplinary segregation.

(5) 'Substantive infraction' means any act committed inside a detention facility that constitutes a violation of Georgia criminal law.

(6) 'Vulnerable incarcerated person' means an incarcerated person who:

(A) Is 18 years of age or younger;

(B) Is 65 years of age or older;

(C) Is pregnant, in the postpartum period, or who has recently had a miscarriage or a pregnancy terminated;

(D) Is, or is perceived by the detention facility to be, lesbian, gay, bisexual, transgender, or intersex; or

(E) Has a diagnosed mental illness, intellectual, developmental, or physical disability, or traumatic brain injury.

(b) Whipping of inmates and all forms of corporal punishment shall be prohibited. All shackles, manacles, picks, leg irons, and chains shall be barred from use as punishment by any penal institution operated under authority of the board. In transferring violent or potentially dangerous inmates within an institution or between facilities, handcuffs, leg chains, waist chains, and waist belts may be utilized. Handcuffs, leg chains, waist chains, and waist belts may also be used in securing violent or potentially dangerous inmates within an institution and in public and private areas such as hospitals and clinics; but in no event may handcuffs, leg chains, waist chains, and waist belts be used as punishment; provided, however, that if the accused becomes violent in the courtroom, restraints may be used.

~~(b) The department shall restrict punishment for an infraction of correctional rules and regulations to isolation and restricted diet or to uniform standard humane punishment which the department may deem necessary for the control of inmates.~~

(c) The department shall use the following schedule of penalties for administrative infractions:

(1) For a first infraction, penalties shall not exceed a verbal warning;

(2) For a second infraction, penalties shall not exceed a written incident report; and

(3) For a third or subsequent infraction, penalties shall not exceed alternative disciplinary sanctions.

(d) The department may penalize all substantive infractions with alternative disciplinary sanctions, but shall limit the use of restrictive housing as follows:

(1) For a first infraction, restrictive housing may only be imposed for a period of one to 15 days;

(2) For a second infraction, subject to subsection (e) of this Code section, restrictive housing may only be imposed for nonconsecutive periods not to exceed a total of 30 days; and

(3) For a third or subsequent infraction, subject to subsection (e) of this Code section, restrictive housing may only be imposed for nonconsecutive periods not to exceed a total of 45 days.

(e) Unless there is clear and convincing evidence that an incarcerated person poses an immediate and substantial risk of physical harm to himself or herself, other persons, or the security of the facility, an incarcerated person shall not be subject to more than 15 consecutive days of restrictive housing nor more than a combined total of 90 days of restrictive housing during a rolling one-year period.

(f) An incarcerated person shall not be placed in restrictive housing for nondisciplinary reasons or for refusing medical treatment.

(g) An incarcerated person may be placed in temporary restrictive housing due to self-harming behaviors if such restrictive housing is ordered by a medical professional and is done in a designated and supervised clinical area.

(h) Unless there is a facility-wide lockdown, a vulnerable incarcerated person may not be placed in restrictive housing until alternative disciplinary sanctions have been attempted and the failure of such attempts has been documented and show that the risk of physical harm to the incarcerated person, other persons, or the security of the facility has not been mitigated.

(i)(1) An incarcerated person in restrictive housing shall be provided:

(A) Weekly comprehensive physical and mental health assessments to determine if the person may be released from restrictive housing;

(B) Maximized access to educational and recreational programming; and

(C) The same standard of access that is provided to incarcerated persons not in restrictive housing to:

(i) Telephone calls;

(ii) Visitations;

(iii) Mail;

(iv) Reading materials;

(v) Basic necessities that shall include:

(I) Food and water;

(II) Showers; and

(III) Clothing and bedding;

(vi) Feminine hygiene products; and

(vii) Preventive and emergency medical care.

105 **SECTION 2.**

106 This Act shall become effective upon its approval by the Governor or upon it becoming law

107 without such approval.

109 All laws and parts of laws in conflict with this Act are repealed.